18

Office - Supreme Court, U.S.
FILED
DEC 21 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 489

THE ERNEST M. LOEB CO., INC.,

and

T. JEFF FEIBLEMAN,

Petitioners,

versus

AVOYELLES DRAINAGE DISTRICT NO. 8 OF THE PARISH OF AVOYELLES, LOUISIANA,

Respondent.

Petition for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

ROBERT A. AINSWORTH, JR.,
ARCHIBALD M. SUTHON,
Counsel for Petitioners.

HAUSER PRINTING CO., INC., NEW ORLEANS

TABLE OF AUTHORITIES

1. Statutory Authorities.

Page

Louisiana Constitution (1921), Art. XIV, Sec. 14 (g) as amended by Louisiana Act 85 of 1934. Appendix A. ____ 2*

Louisiana Constitution (1921), Art. XIV, Sec. 14 (a) as amended by Louisiana Act 261 of 1926. Appendix A. ____ 2*

Louisiana Constitution (1921), Art. XIV, Sec. 14 (h). Appendix A. ____ 2*

Louisiana Constitution (1913), Art. 281. Appendix A. ____ 2*

2. Cases.

(a) United States Supreme Court and Other Federal Decisions.

Barney v. Latham, 103 U.S. 205, 26 L. ed. 514 (1881) ____ 9

Carneal v. Banks, 10 Wheat. 181, 6 L. ed. 297 (1825) ____ 9

Commissioner v. Sunnen, 333 U.S. 591, 68 S. Ct. 715, 92 L. ed. 898 (1948) ____ 10

Crockett v. Lee, 7 Wheat. 522, 5 L. ed. 513 (1822) ____ 9

Galena v. United States ex rel. Amy (Galena v. Amy), 5 Wall. 705, 18 L. ed. 560 (1867) ____ 13

G. & C. Merriam Co. v. Saalfield, 241 U.S. 22, 36 S. Ct. 477, 60 L. ed. 868 (1916) ____ 10

Geer v. Mathieson Alkali Works, 190 U.S. 428, 23 S. Ct. 807, 47 L. ed. 1122 (1903) ____ 9

Harding v. Handy, 11 Wheat. 103, 6 L. ed. 429 (1826) ____ 9

Harrison v. Nixon, 9 Pet. 483, 9 L. ed. 201 (1835) ____ 9

* Page references are to initial citations, since references appear throughout petition.

TABLE OF AUTHORITIES—(Continued)

Cases—(Continued) Page

Kansas City Life Insurance Co. v. Evangeline Parish School Board, 58 F. S. 39 (1944); aff'd 153 F. 2d 611 (1946) ____ 13

Johannessen v. United States, 225 U.S. 227, 32 S. Ct. 613, 56 L. ed. 1066 (1912) ____ 10

Michigan Trust Co. v. Ferry, 228 U.S. 346, 33 S. Ct. 550, 57 L. ed. 867 (1913) ____ 10

Mills v. Duryee, 7 Cranch, 481, 3 L. ed. 411 (1813) ____ 10

New Lamp Chimney Co. v. Ansonia Brass & Copper Co., 91 U.S. 656, 23 L. ed. 336 (1876) ____ 10

Postal Teleg.-Cable Co. v. Newport, 247 U.S. 464, 38 S. Ct. 566, 62 L. ed. 1215 (1918) ____ 10

Queensbury v. Culver, 19 Wall. 83, 22 L. ed. 100 (1874) ____ 11

Stewart v. Dunham, 115 U.S. 61, 5 S. Ct. 1163, 29 L. ed. 329 (1885) ____ 7

The Hoppet v. United States, 7 Cranch 389, 3 L. ed. 380 (1813) ____ 9

United States ex. rel. Morris Ranger v. New Orleans, 98 U.S. 381, 25 L. ed. 225 (1879) ____ 13, 14

Vattier v. Hinde, 7 Pet. 252, 8 L. ed. 675 (1833) ____ 9

Weinstock v. Kallett, 11 F. R. D. 270 (1951) ____ 7

Zelley v. Muehleck, 10 F. R. D. 62 (1950) ____ 7

(b) Louisiana Supreme Court Decisions.

Ascension Red Cypress Co., Ltd. v. New River Drainage District, 175 La. 300, 143 So. 270 (1932) ____ 14

Martin v. Mayor and Board of Aldermen, 212 La. 439, 32 So. 2d 711 (1947) ____ 13

Ozenne v. Board of Commissioners, 183 La. 465, 164 So. 247 (1935) ____ 13

Rawle v. Jefferson and Plaquemines Drainage District 187 La. 891, 175 So. 610 (1937) ____ 13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. _____

THE ERNEST M. LOEB CO., INC.,

and

T. JEFF FEIBLEMAN,

Petitioners,

versus

AVOYELLES DRAINAGE DISTRICT NO. 8 OF THE PARISH OF AVOYELLES, LOUISIANA,

Respondent.

Petition for Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit.

The petition of The Ernest M. Loeb Co., Inc., a corporation, plaintiff-appellant below, and of T. Jeff Feibleman, intervenor-appellant below, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 20, 1951. Petitions for rehearing filed July 11, 1951, separately by plaintiff-appellant (R. 393 *et seq.)*, and by intervenor-appellant (R. 407 *et seq.)*, were denied September 22, 1951

(R. 417). One petition for a writ of certiorari is filed by plaintiff-appellant and intervenor-appellant.

OPINIONS BELOW

The judgment, findings of fact, and conclusions of law of the District Court are printed in the record (R. 312 *et seq.)*. The opinion of the United States Court of Appeals (R. 390 *et seq.)* is reported in 189 F. (2d) 965.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

STATUTES INVOLVED

(Constitutional Provisions of the State of Louisiana)

The pertinent constitutional provisions are Constitution of the State of Louisiana (1921), Article XIV, Section 14 (g), as amended by Louisiana Act 85 of 1934; Constitution of the State of Louisiana (1921), Article XIV, Section 14 (a), as amended by Louisiana Act 261 of 1926; Constitution of the State of Louisiana (1921), Article XIV, Section 14 (h); and Constitution of the State of Louisiana (1913), Article 281. The pertinent provisions of the constitutions of the State of Louisiana are printed in Appendix A.

QUESTIONS PRESENTED

The questions presented are:

(1) Are petitioners entitled to judgment against respondent for the respective amounts shown to be due them by the stipulations entered on the trial in the District Court on bonds dated June 1, 1919 issued by respondent Drainage District and coupons attached?

(2) Has the respondent Drainage District the legal authority to raise funds with which to pay such amounts to petitioners?

(3) Are petitioners entitled to a writ of mandamus ordering respondent Drainage District to refund its indebtedness on its outstanding bonds and coupons dated June 1, 1919 in accordance with Constitution of the State of Louisiana (1921), Article XIV, section 14 (g), as amended by Act 85 of 1934, for the benefit of petitioners and other holders of such bonds and coupons?

STATEMENT OF THE CASE

The Ernest M. Loeb Co., Inc., a Delaware corporation, one of the petitioners herein, filed a civil action (R. 1 *et seq.)* against the Avoyelles Drainage District No. 8 of the Parish of Avoyelles, Louisiana, respondent herein, a municipal corporation created by the laws of Louisiana, alleging plaintiff's ownership of certain bonds and coupons fully described in its petition issued by the Drainage District on June 1, 1919; prayed for judgment on the bonds in the principal sum of Eleven Thousand Five Hundred and 00/100 ($11,500.00) Dollars and on the coupons in the principal sum of One Thousand Seventy-five and 00/100 ($1,075.00) Dollars; also prayed for an accounting and that defendant be required to pay such moneys as might be on hand or accrue from the tax dedicated as security for the payment of the bonds of that series to the holders of such bonds; and that, if funds on hand or accounted for be insufficient defendant be required to extend the levy of taxes for the payment of the bonds and coupons, or, alternatively, be required to refund its bonded indebted-

ness still outstanding under said issue, "as provided for under the constitution and statutes of Louisiana." We have stated the effect of the prayer as modified by the stipulation entered on the trial on the merits (R. 115 *et seq.)*

T. Jeff Feibleman, a resident of Louisiana, intervened as the holder of outstanding bonds and coupons of the same issue; prayed for judgment on his bonds in the principal sum of Eight Thousand Five Hundred and 00/100 ($8,500.00) Dollars and on the coupons in the principal sum of One Thousand and 00/100 ($1,000.00) Dollars; and otherwise prayed for the same relief as plaintiff (R. 22 *et seq.;* R. 118 *et seq.).*

The Drainage District in its answer (R. 32 *et seq.)* prayed that the demand of plaintiff be rejected and its suit dismissed, "or if the court should deem it advisable to order the proration of such funds (on hand from collections on the tax dedicated to payment of the bond issue), then that such be only and after a full opportunity of the bondholders to be heard herein." (R. 49). It also admitted (R. 32) the facts showing jurisdiction of plaintiff's suit.

The main contentions of the Drainage District were: (1) that the taxes to support the bond issue were voted by the qualified electors and property holders of the drainage district for Twenty-one (21) years and expired after 1940; (2) although the law permits such taxes to be levied for a period not to exceed forty (40) years, the election that authorized the bond issue controls the action of the Board and there is no authority for the Board to extend the tax for any additional period, and it cannot be compelled to do so; and (3) that

the provisions for refunding the indebtedness evidenced by the outstanding bonds of this issue are permissive and not mandatory.

By stipulation the Drainage District admitted that the proper jurisdictional facts appear, intervenor was a proper party and the holder and owner for value of seventeen (17) bonds described in his petition, and that the answer filed to plaintiff's petition should be deemed, insofar as applicable, as filed with reference to the petition of intervention (R. 57 *et seq.)*.

Before trial on the merits, a partial distribution of the tax funds on hand was ordered to be made by defendant on account of the principal of each of the seventy-two (72) outstanding bonds of the issue sued on (R. 63 *et seq.;* R. 112 *et seq.)* Distribution of Two Hundred Fifteen and 27/100 ($215.17) Dollars on acount of the principal of each of the outstanding bonds was then made (R. 318 *et seq.)*. This left due on the principal of each bond Two Hundred Eighty-four and 73/100 ($284.73) Dollars or the total sum of Twenty Thousand Five Hundred and 56/100 ($20,500.56) Dollars in principal on the seventy-two (72) bonds.

After this distribution the principal still due petitioner The Ernest M. Loeb Co., Inc., on its twenty-three (23) bonds is Six Thousand Five Hundred Forty-eight and 79/100 ($6,548.79) Dollars and the principal due petitioner T. Jeff Feibleman on his seventeen (17) bonds is Four Thousand Eight Hundred Forty and 41/100 ($4,840.41) Dollars.

On the trial stipulations were made (R. 115 *et seq.;* R. 118 *et seq.)* by which plaintiff and intervenor were each admitted to be the owner for value of the bonds

and coupons sued on and by which it was further admitted that each of them is still due the respective amounts stated above in principal on the bonds sued on and the further respective sums claimed as total value of coupons. The District Court recognized in its opinion (R. 324) that plaintiff and intervenor are each entitled to a moneyed judgment, the Court using the following language:

> "From the tenor and the conditions of the bonds aforedescribed, plaintiff and intervenor are each entitled to judgment herein for the balance remaining due each of them on the principal of the bonds owned respectively, with legal interest at five (5%) per cent per annum from the due dates of the various bonds until paid, and also for the total face value of the coupons held by each of them, with legal interest at five (5%) per cent per annum on the various coupons from their respective due dates until paid."

Yet the Court said further (R. 340) that it was constrained to dismiss the complaints of plaintiff and intervenor; and in its judgment on the merits (R. 342 *et seq.)* rejected the demands for judgment "for the amount of the bonds declared upon" in the petition of the plaintiff and of the intervenor "inasmuch as such judgment would be without effect and unenforceable because it has been established herein that said Drainage District has no funds to pay the same, nor has it the legal authority to raise more funds."

The District Court also approved the accounting made by the Drainage District and rejected the demand for further accounting; rejected the demand to extend such an acreage tax as would be necessary to pay the bonds and coupons held by plaintiff and intervenor and

other holders; rejected the demand that the Drainage District be ordered to refund the indebtedness; and ordered the remaining balance of Four Hundred Thirty-one and 65/100 ($431.65) Dollars in the treasury of the Drainage District to be prorated among the bondholders (R. 343 *et seq.)*; and further confirmed the partial distribution and various amounts already paid under the orders of the Court.

On separate appeals taken by each of the petitioners herein from this judgment, the United States Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court, in a *per curiam* opinion which does not mention or notice the prayers of plaintiff and intervenor for a moneyed judgment on the outstanding bonds and coupons owned by each of them respectively (R. 390 *et seq.)*.

In the Court of Appeals, plaintiff and intervenor abandoned their contention that the Drainage District should be ordered to extend the acreage tax; and there are only three questions presented by this petition as stated above herein.

There is no question of Federal jurisdiction, the present suit being a spurious class suit provided for in the rules of civil procedure (Rule 23 (a), (3), see 28 U. S. C.).[1] This suit has been so treated by the partial distribution referred to.

---

[1] In a class action, citizenship of original parties determines the jurisdiction insofar as it is controlled by diversity of citizenship; where plaintiff in spurious class suit was a non-resident, asserted fact that only a few of the others on whose behalf he sued were non-residents did not deprive federal district court of jurisdiction, if plaintiff's claim was for the jurisdictional amount. *Stewart v. Dunham*, 115 U.S. 61, 5 S. Ct. 1163, 29 L. ed. 329 (1885); *Zelley v. Muehleck*, 10 F.R.D. 62 (1950); *Weinstock v. Kallett*, 11 F.R.D. 270, 272 (1951).

REASONS FOR GRANTING THE WRIT

(1). The decision of the court below is of major importance to all interested in the legal aspects of municipal bond law in respect to (a) the liability of the public authority issuing such bonds and (b) the meaning and application of statutes authorizing the refunding of municipal bonds. This case involved only a comparatively small amount of money to the various holders of respondent's defaulted bonds; the principles involved will have a widespread effect on investments in many bonds offered for sale by public authorities in all parts of our country. If those who buy such bonds are made to fear that they cannot compel a refunding upon default, even when the issuing authority has the power to refund, and that they may even be denied judgment for what is due them, on the asserted ground that the issuing municipal corporation has not "the legal authority to raise more funds", when the law has admittedly given that issuing authority the power to refund that very indebtedness; then such a fearful confusion on the subject of rights and remedies is bound to depreciate the prices offered for municipal bonds. That will be the result of the lack of confidence inspired by the per curiam affirmance by the Court of Appeals of the judgment of the District Court and its approval of the District Court's opinion.[2]

(2). The per curiam opinion of the court below—with all due deference and respect for the learned court—leaves the property right of petitioners, and of others similarly situated, in their bonds and coupons of the defaulted issue, in a state of denial inconsistent with the well recognized principles of judicial interpretation.

---

[2] Reported in 92 F. S. 126.

It approves the opinion of the District Court, in affirming its judgment; yet that judgment is clearly at variance with the District Court's finding of fact [3] that plaintiff and intervenor are each entitled to judgment for the balance remaining due each of them on the principal of the bonds owned respectively and also for the total face value of the coupons held by each of them. Each of the petitioners clearly has asked for a judgment for the money thus due him, with interest, and also for a mandamus to compel the Drainage District to refund the indebtedness on its outstanding bonds and coupons. Thus, the issue presented to the Court of Appeals embraced two controversies.

(a). A suit may, consistently with the rules of pleading, embrace several different controversies.[4]

(b). The failure of the District Court to grant petitioners a moneyed judgment in accordance with its allegations and the admissions of respondent, and the failure of the Court of Appeals to reverse the denial of such moneyed judgment and to grant same to petitioners, violate a well settled rule of jurisprudence recognized as fundamental by the Supreme Court of the United States.

It is a well settled rule that the decree must conform to the allegations in the pleadings as well as to the proofs in the cause.[5]

---

[3] R. 324.

[4] *Barney v. Latham*, 103 U.S. 205, 214, 215, 26 L. ed. 514 (1881); *Geer v. Mathieson Alkali Works*, 190 U.S. 428, 432, 23 S. Ct. 807, 47 L. ed. 1122 (1903).

[5] *The Hoppet v. United States*, 7 Cranch 389, 3 L. ed. 380 (1813); *Crockett v. Lee*, 7 Wheat. 522, 5 L. ed. 513 (1822); *Carneal v. Banks*, 10 Wheat. 181, 187-189, 6 L. ed. 297 (1825); *Harding v. Handy*, 11 Wheat. 103, 119, 6 L. ed. 429 (1826); *Vattier v. Hinde*, 7 Pet. 252, 8 L. ed. 675 (1833); *Harrison v. Nixon*, 9 Pet. 483, 9 L. ed. 201 (1835).

(c). It is no valid objection to the right of petitioners to recover moneyed judgments to say, as did the District Court that, "it has been established herein that said Drainage District has no funds to pay the same, nor has it the legal authority to raise more funds".[6]

A judgment may be complete and perfect, and have full effect independent of the right to issue execution thereon.[7]

(d). If petitioners are left in their present position of being denied judgments for the money due them, any other suit to recover from the Drainage District would be dismissed on a plea of *res judicata*.[8]

(e). The universal rule of jurisprudence that protects public property and public funds, unless such public funds are dedicated to the payment of a particular judgment or the debt from which it arose, is so well established as to require no citation. It will be a sufficient

---

[6] R. 342.

[7] *Mills v. Duryee*, 7 Cranch. 481, 3 L. ed. 411 (1813); *Michigan Trust Co. v. Ferry*, 228 U.S. 346, 33 S. Ct. 550, 57 L. ed. 867 (1913).

[8] "The general rule of *res judicata* applies to repetitious suits involving the same cause of action. It rests upon considerations of economy of judicial time and public policy favoring the establishment of certainty in legal relations. The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound 'not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' *Cromwell v. Sac County*, 94 U.S. 351, 352, 24 L. ed. 195, 197. The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. See von Moschzisker, *'Res Judicata'*, 38 Yale L J 299; Am L Inst Restatement, Judgments, Sections 47, 48." *Commissioner v. Sunnen*, 333 U.S. 591, 597, 68 S. Ct. 715, 719, 92 L. ed. 898, 905, 906 (1948). See also *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U.S. 656, 23 L. ed. 336 (1876); *G. & C. Merriam Co. v. Saalfield*, 241 US. 22, 36 S. Ct. 477, 60 L. ed. 868 (1916); *Johannessen v. United States*, 225 U.S. 227, 32 S. Ct. 613, 56 L. ed. 1066 (1912); *Postal Teleg.-Cable Co. v. Newport*, 247 U.S. 464, 38 S. Ct. 566, 62 L. ed. 1215, 1221 (1918).

protection to respondent against any improper execution issuing under the moneyed judgments sought by petitioners. Without such judgments, petitioners are left without any real argument to resort to the recourse of seeking the favorable exercise of the discretion of the Board of Commissioners of the Drainage District, the recourse suggested to them by the District Court in its opinion.[9]

(f). It has been held by this Court that the holders of municipal bonds may maintain an action at law to recover the amount payable.[10]

(3). The respondent Drainage District has the legal authority to raise funds with which to pay the amounts due petitioners. The Drainage District has not been abolished and still enjoys corporate existence. It joined issue on the plaintiff's suit filed by The Ernest M. Loeb Co., Inc., one of the petitioners herein, and on the petition of intervention filed by T. Jeff Feibleman, the other petitioner herein. The testimony of its Secretary-Treasurer shows that four of the five former members of its Board of Commissioners are still living and still members of the Board, its governing authority.[11] By the applicable provisions of the present Constitution of the State of Louisiana[12] it has "full power and authority to issue negotiable interest bearing refunding

---

[9] R. 340 *et seq.*

[10] *Queensbury v. Culver*, 19 Wall. 83, 22 L. ed. (1874).

[11] R. 140 *et seq.*

[12] Constitution of the State of Louisiana (1921) Article XIV, Section 14 (g), as amended by Louisiana Act 85 of 1934; Article XIV, Section 14 (a), as amended by Louisiana Act 261 of 1926, which is referred to here only for the purpose of showing that drainage districts are among the political subdivisions authorized to refund by Article XIV, Section 14 (g), as amended by Louisiana Act 85 of 1934; Article XIV, Section 14 (h), which prescribes limitations of term, interest and due dates of such refunding bonds. These provisions are all set forth in Appendix A.

bonds" to refund the unpaid balance of its defaulted bond issue, all in the manner and under the terms and conditions set forth in the provisions referred to.

(a). Under the present constitutional provisions of the State of Louisiana, the governing body of any political subdivision authorized to refund "shall have full power and authority to adopt all ordinances or resolutions necessary to carry" the issuance of refunding bonds authorized by such constitutional provisions "into effect"; and "no proceedings in respect to the issuance of any such refunding bonds shall be necessary, except such as are contemplated" by such constitutional provisions, "which shall be self-operative, and no further legislation shall be required to effect the same." [13] In this respect the present state constitution is different from the former one in effect at the time that the defaulted bonds were issued on June 1, 1919, which constitution required that any refunding bonds be issued by the governing authority of the particular subdivision authorized to refund, only when such governing authority had been authorized by a vote of a majority, in number and amount of the property taxpayers, qualified to vote under the Constitution and laws of the state who vote on the proposition at an election held for that purpose after due notice.[14] The present constitutional provision, in eliminating by the amendment contained in Louisiana Act 85 of 1934 the favorable vote of the qualified property taxpayers as a prerequisite to refunding applies to the refunding of bonds issued before the

---

[13] Constitution of the State of Louisiana (1921), Article XIV, Section 14 (g), as amended by Louisiana Act 85 of 1934. See Appendix A.

[14] Constitution of the State of Louisiana (1913) Article 281, Section 6. See Appendix A.

amendment;[15] is remedial in character;[16] and a refunding thereby accomplished does not constitute the creation of a new debt.[17]

(4). Petitioners are entitled to a writ of mandamus ordering respondent Drainage District to refund its indebtedness on its outstanding bonds and coupons dated June 1, 1919, in accordance with the Constitution of the State of Louisiana (1921), Article XIV, Section 14 (g), as amended by Louisiana Act 85 of 1934, for the benefit of petitioners and other holders of such bonds and coupons. Where a municipal corporation has power to levy a tax for the payment of a judgment against it, it is its duty, through its governing authority, to exercise that power. It has been so held by the Supreme Court of the United States,[18] and also by the Supreme

---

[15] *Ozenne v. Board of Commissioners*, 183 La. 465, 164 So. 247, 249, 250 (1935); *Rawle v. Jefferson and Plaquemines Drainage District*, 187 La. 891, 175 So. 610, 612, 613 (1937).

[16] *Kansas City Life Insurance Co. v. Evangeline Parish School Board*, 58 F.S. 39, 47 (1944); aff'd. 153 F. 2d 611 (1946). See also *Martin v. Mayor and Board of Aldermen*, 212 La. 439, 32 So. 2d 711 (1947).

[17] *Kansas City Life Insurance Co. v. Evangeline Parish School Board*, 58 F.S. 39, 47 (1944); aff'd. 153 F. 2d 611 (1946). See also *Martin v. Mayor and Board of Aldermen*, 212 La. 439, 32 So. 2d 711 (1947).

[18] *United States ex rel. Morris Ranger v. New Orleans*, 98 U.S. 381, 25 L. ed. 225 (1879); *Galena v. United States ex rel. Amy (Galena v. Amy)*, 5 Wall. 705, 18 L. ed. 560 (1867). In the *Morris Ranger* case the Court said (25 L. ed. 227):

> "As already said, the power of taxation is a power incident to such a corporation, and may be exercised for the purposes authorized by its charter or subsequent legislation. Whatever the Legislature empowers the corporation to do is presumably for its benefit, and may, in 'the proper government of the same,' be done. Having the power to levy a tax for the payment of the judgments of the relator, it was the duty of the city, through its authorities, to exercise the power. The payment was not a matter resting in its pleasure, but a duty which it owed to the creditor. Having neglected this duty, the case was one in which a mandamus should have been issued to enforce its performance. *Knox Co. v. Aspinwall*, 24 How. 376, 16 L. ed. 735; *Von Hoffman v. Quincy*, 4 Wall. 535, 18 L. ed. 403; *Benbow v. Iowa City*, 7 Wall. 313, 20 L. ed. 70; *Supervisors v. Rogers*, 7 Wall. 175, 19 L. ed. 162; *The Supervisors v. Durant*, 9 Wall. 415, 19 L. ed. 732; *Cass Co. v. Johnston*, 95 U.S. 360, 24 L. ed. 416."

Court of the State of Louisiana.[19] In view of the admission by the respondent Drainage District of its indebtedness for the balance due on its defaulted bond issue, as evidenced by its answer, by the stipulations at the trial, and by the partial distribution to all holders of unpaid bonds of this issue, and also its defense that it has no further means (other than the small balance remaining undistributed) with which to make payment, the authorities cited should have been applied by the Court of Appeals to this case and the judgment of the District Court reversed and a mandamus ordered to be issued.

(a). Giving effect to the principles of these decisions and under the plain provisions of the Louisiana Constitution authorizing respondent Drainage District to refund,[20] the reasoning of the District Court to the effect that there is no warrant in law for ordering the Drainage District to effect said refunding[21] is clearly erroneous. The District Court also sought to distinguish the *Morris Ranger* case[22] and the *Ascension Red Cypress Co.* case[23] from the situation before it. There is no validity in such a distinction, since in each of those cases we rely on the rule of decision that where a municipal corporation has the means in its power to pay its debt it will be compelled by mandamus to do so; and here the Drainage District has the means in its power to provide for payment of its debt to the bondholders by

---

[19] In *Ascension Red Cypress Co., Ltd., v. New River Drainage District*, 175 La. 300, 143 So. 270, (1932) the Supreme Court of Louisiana found that the defendant had been ordered by a judgment to pay plaintiff's debt, and that the defendant had means in its power (in the case cited provided by the taxpayers) by which the debt might be paid, and issued a mandamus against the defendant to pay.

[20] See Appendix A.

[21] R. 329 *et seq.*; R. 343.

[22] R. 335 *et. seq.*

[23] R. 338 *et seq.*

refunding and should be compelled by mandamus to do that.

CONCLUSION

For the foregoing reasons, this petition for writs of certiorari should be granted.

Respectfully submitted,

ROBERT A. AINSWORTH, JR.,
ARCHIBALD M. SUTHON,
Counsel for Petitioners.

APPENDIX A

PERTINENT STATUTES

Constitution of the State of Louisiana (1921), Article XIV, Section 14 (g), as amended by Act 85 of 1934

For the purpose of readjusting, refunding, extending or unifying the whole or any part of its outstanding bonds and certificates of indebtedness, any political subdivision specified in Section 14 (a) of this Article as amended, and any Parish School Board, shall have full power and authority to issue negotiable interest bearing refunding bonds in an amount not exceeding the amount of bonds and certificates of indebtedness to be refunded, and the interest due thereon.

Such political subdivisions, through their governing authorities, and Parish School Boards, are authorized to and shall secure the payment of said refunding bonds, in interest and principal, by the levying of special ad valorem taxes annually in an amount sufficient to pay interest annually or semi-annually and to pay the principal falling due each year, as provided in Section 14 (a) of this Article, when the bonds to be refunded were secured in like manner. Provided, drainage and subdrainage districts shall secure the payment of said refunding bonds by imposing and collecting annually an acreage tax or forced contribution on each and every acre of land within such districts, sufficient in amount to pay interest and principal falling due each year, when the bonds to be refunded were secured in like manner. Provided further, that Parish School Boards, subject to the approval of the State Board of Education, shall secure the payment of refunding bonds issued under

this Paragraph by anticipation and pledge of their annual revenues in an amount sufficient to pay interest and principal falling due each year.

Refunding bonds issued hereunder shall be governed by the provisions of Section 14 (h) of this Article; provided that the maturities shall be so fixed as to effect a consequent reduction in the annual rate of taxes or annual forced contributions required, or annual revenues pledged.

Upon the issuance of refunding bonds, as provided herein, by any political subdivision or Parish School Board, any holder of any outstanding bond or certificate of indebtedness of any such political subdivision or Parish School Board, whether matured or unmatured, may upon surrendering such bond or certificate of indebtedness to the issuing authority, receive in exchange and substitution therefor a refunding bond of the same amount, bearing interest not exceeding six (6%) per centum per annum, maturing not longer than forty (40) years from date of such refunding bond. Provided, that all or any part of the refunding bonds issued under the provisions of this paragraph, may in the discretion of the issuing authority, be sold at not less than par, after advertisement in such publication as the issuing authority may select, once a week for three weeks, and the funds realized from the sale thereof shall be applied exclusively to the payment of the bonds or certificates of indebtedness refunded.

The limitations as to indebtedness and bonds issued based on the assessed valuation contained in Section 14 (f) of this Article shall not apply to refunding bonds issued hereunder.

The governing body of any such subdivision and the Parish School Boards shall have full power and authority to adopt all ordinances or resolutions necessary to carry the provisions of this paragraph into effect. No proceedings in respect to the issuance of any such refunding bonds shall be necessary, except such as are contemplated by this paragraph, which shall be self-operative, and no further legislation shall be required to effect the same. Such refunding bonds issued hereunder shall be, and are, hereby declared to have the qualities of negotiable paper under the Law Merchant. If the validity of any refunding bonds issued under the provisions of this paragraph is not raised within thirty (30) days from date of publication of the issuing of said bonds, the authority to issue the said bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed and no court shall have authority to inquire into such matters.

Constitution of the State of Louisiana (1921), Article XIV, Section 14 (a), as amended by Act 261 of 1926

Municipal corporations, parishes and schools, road, subroad, sewerage, drainage and sub-drainage districts, and irrigation districts, hereinafter referred to as subdivisions of the State, may incur debt and issue negotiable bonds, when authorized by vote of a majority in number and amount, of the property taxpayers qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose after notice published or posted for thirty (30) days in such manner as the Legislature may prescribe, and the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to

pay the interest annually or semi-annually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity.

Constitution of the State of Louisiana (1921), Article XIV, Section 14 (h)

No bonds issued by any subdivision hereunder shall run for a longer period than forty (40) years from the date thereof, or bear a greater rate of interest than six per centum per annum payable annually or semi-annually, or be sold for less than par. Such bonds shall become due and payable in annual installments beginning not more than three years after the date of issuance.

Constitution of the State of Louisiana (1913), Article 281

Article 281. Section 1. Municipal corporations, parishes and school, drainage, sub-drainage, road, subroad, navigation, or sewerage districts, City of New Orleans excepted, hereinafter referred to as subdivisions of the State, when authorized by a vote of a majority, in number and amount of the property taxpayers, qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose, after due notice of said election has been published for thirty days in the official journal of the municipal corporation or parish or where there is no official journal, in a newspaper published therein, may, through their respective governing authorities, incur debts and issue negotiable bonds therefor, and each year while any bonds thus issued are outstanding, the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to pay the interest,

annually or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity; provided, that such special taxes for all purposes as above set forth shall not in any year exceed ten mills on the dollar of assessed valuation of the property in such subdivisions.

No bonds shall be issued for any other purpose than that stated in the submission of the proposition to the taxpayers, and published for thirty (30) days as aforesaid, or for a greater amount than therein mentioned; nor shall such bonds be issued for any other purpose than for constructing, improving and maintaining public roads and highways, paving and improving streets, roads and alleys, purchasing and constructing systems of waterworks, sewerage, drainage, navigation, lights, public parks and buildings, together with all necessary equipment and furnishing, bridges and other works of public improvement, the title to which shall rest in the subdivision creating the debt, as the case may be; nor shall such bonds run for a longer period than forty (40) years from their date or bear a greater rate of interest than five per centum (5) per annum, or be sold for less than par. The total issue of bonds by any subdivision for all purposes shall never exceed ten per centum (10) of the assessed valuation of the property in such subdivisions. Municipal councils are granted the authority to create within their limits one or more sewerage districts.

Section 2. Police juries in any parish or parishes may in accordance with law create drainage districts, which in addition to the powers hereinabove granted shall have further power and authority to establish and

maintain drainage systems and the governing authorities of such districts, when authorized by a majority in number and amount of the property taxpayers of said district qualified to vote under the Constitution and laws of the State of Louisiana who vote in an election held for that purpose, may for the purpose of establishing and maintaining gravity drainage in such districts, impose and collect for a period not exceeding forty (40) years forced contributions or acreage taxes not exceeding fifty cents (50 cents) per acre per year on each and every acre of land, which is susceptible of gravity drainage, in the subdivision where such an election is held. The governing authority of such subdivisions, when authorized as set forth, may incur debt and issue negotiable bonds to represent same, secured by the forced contribution or acreage taxes above described, provided that the total amount of debts thus incurred or bonds issued shall not exceed in principal and interest the aggregate amount to be raised by said annual contributions or acreage taxes during the period for which the same are imposed, and that no such bonds shall be issued for any other purpose than that for which the said contributions or acreage taxes are voted, to run for a longer period than forty (40) years, bear a greater rate of interest than five per centum per annum, payable annually or semi-annually, or to be sold for less than ninety per centum (90%) of par. And the Board of Commissioners of Drainage Districts without submission to the taxpayers are authorized to levy additional taxes under the terms and conditions of this article, and within the limits fixed thereby for the purpose of perfecting and completing any system of drainage eighty per cent of which shall have been accomplished at the time of said additional levy of taxes, and to fund the avails of said additional levy of taxes into bonds

under the terms and conditions set forth in the present article.

Section 3. When the character of any land is such that it must be levied and pumped in order to be drained and reclaimed the Board of Drainage Commissioners of the district in which the land is situated shall upon the petition of land owners, whether individuals or corporations, resident or non-resident, owning not less than a majority of acres in the area to be affected, ascertain the cost per acre of draining and reclaiming said land incur debt against each and every acre of land thus situated for an amount sufficient to drain and reclaim it, and to issue for such debt negotiable bonds for the total aggregate amount of the total cost of such drainage, which bonds shall run not longer than forty (40) years from their date and bear interest at a rate not exceeding five per centum per annum, payable annually or semi-annually, and shall be sold for not less than ninety per centum (90%) of par; and said Board of Drainage Commissioners shall each year as long as any bonds are outstanding levy annually upon each and every acre of land, whether public or private, situated in said drainage or sub-drainage district, forced contributions or acreage taxes in an amount per acre sufficient to maintain the drainage of the said district or sub-drainage district, to pay the interest annually or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund for the payment of said bonds at maturity; provided, that such forced contribution or acreage taxes for all purposes shall never exceed Three Dollars and Fifty Cents ($3.50) per acre per annum.

All bonds heretofore issued under and by virtue of this Article 281 of the Constitution by the governing

authority of any subdivision, which have heretofore not been declared invalid by a judgment of a court of last resort in the State of Louisiana and more than sixty (60) days have elapsed since the promulgation of the proceedings evidencing the issuing of said bonds, are hereby recognized and declared to be valid and existing bonds and obligations of the district or subdivision issuing the same, and no court shall have jurisdiction to entertain any contest wherein their validity or constitutionality is questioned. (Sections 2 and 3, as amended by Act 192, 1914, adopted by the electors of the State of Louisiana, at the Congressional election held November 3, 1914.)

Section 4. Police juries of the various parishes throughout the State, for the purpose of constructing highways and public buildings for the parish, and the governing authorities of municipal corporations, for the purpose of paying (sic) or improving streets or alleys, and for all municipal improvements, after making provision for the payment of all statutory and ordinary charges, may fund into bonds running for a period not exceeding ten (10) years, and bearing interest at a rate not exceeding five (5) per centum per annum, which bonds shall not be sold for less than par, the avails of the residue of the ten (10) mill tax authorized by this Constitution.

Section 5. Should any of the aforesaid subdivisions of the State neglect or fail for any reason to impose or collect the taxes provided for in the foregoing sections, any person in interest may by summary proceedings in the district court having jurisdiction, enforce the imposition or collection of such taxes, or both, and such proceedings shall be filed and triable free of any cost to the litigant.

Section 6. Municipal corporations, parishes and school, drainage, sub-drainage, road, subroad, navigation and sewerage districts (the City of New Orleans excepted), hereinafter referred to as subdivisions, when authorized to do so in the manner herein provided, may, for the purpose of readjusting, refunding, extending, or unifying their bonded indebtedness, issue new bonds, covering any particular issue or issues of bonds or the whole outstanding bonded indebtedness incurred by such subdivision for the purposes specified in Section 1 of this article or any issue or refund issue bonds or renewal or refunding bonds issued by such subdivision in novation or renewal and any bonds, heretofore or hereafter issued for the purposes specified in said Section 1 of this Article. No bonds issued under this section shall run for more than forty (40) years from their date, bear a greater rate of interest than five per centum per annum, payable semi-annually or annually, or be sold by the subdivision issuing the same for less than par. Any bonds issued under this section may be either exchanged in whole or part, value for value for bonds issued, or to be issued, under this Article, or sold and the proceeds thereof used for the purpose of purchasing outstanding bonds. Before any bonds shall be issued under this section the issuance thereof shall be authorized by a vote of a majority in number and amount of the property taxpayers qualified to vote under the Constitution and laws of this State who vote on the proposition at an election held for that purpose, after due notice of said election has been published for thirty days in the official journal of the parish or parishes in which said subdivisions are located, or where there is no official journal, in any newspaper published in such parish or parishes; provided however, that the governing body of any such subdivision may in their discretion and without

a vote of the property taxpayers, issue refunding or renewal bonds under this section, if the bonds to be refunded or renewed thereby have been or shall be issued for any of the purposes specified in Section 1 of this article, or in novation or renewal of any bonds issued or to be issued for the said purposes specified in Section 1 of this Article, and such issue or issues so refunded or renewed have been or shall be authorized by a vote of a majority in number and amount of the property taxpayers qualified by a vote under the Constitution and laws of this State who voted or shall vote on the proposition at an election held for that purpose. When the bonds of any outstanding issue shall have been obtained either by purchase or exchange, the tax levy to pay for such bonds shall at once cease and such bonds be cancelled. Each year while any refunding bonds issued under this paragraph are outstanding, the governing authorities of such subdivision shall levy and collect annually, in excess of all other taxes, a tax sufficient to pay the interest, annually or semi-annually, and the principal falling due or such amount as may be required for a sinking fund for the payment of said bonds at maturity, provided that such special ad valorem tax for all purposes shall not in any year exceed ten mills on the dollar of the assessed valuation of the property in such subdivision.

The governing body of any such subdivision shall have full power to adopt and pass all ordinances and resolutions necessary to carry the provision of this section into effect. An election may be held under the provisions of this section at the same times and places and by the same election officers as an election on the question of incurring debt and issuing bonds under the provisions of Section 1 of this Article.

Where bonds of any subdivision have been heretofore issued for any of the purposes specified in Section 1 of this Article, and such issue has been authorized by the vote of a majority in number and amount of the property taxpayers qualified to vote under the Constitution and laws of this State who voted upon the proposition to issue such bonds at an election held for that purpose, and where such bonds have been issued and sold by such subdivision for not less than par value thereof, the said bonds, or any refund issue bonds, or renewal or refunding bonds issued in novation or renewal of bonds issued for said purposes specified in Section 1 of this Article, are hereby validated, ratified and confirmed; provided that such bonds did not at the time of their issue exceed ten per centum of the assessed valuation of the property in such subdivision, and any such bonds hereby ratified, approved and confirmed shall be deemed to be the valid and incontestable obligations of such subdivision and a tax for the payment of the principal and interest thereof and to create a sinking fund for their redemption shall be levied and collected in the manner and within the limits prescribed by Section 1 of this Article. This entire Article is to be considered a full grant of power to the subdivisions of the State as set forth herein.

This is to certify that copies of this petition have been served on counsel for respondent on this the _____ day of December, 1951.